

The Committee on the Judiciary moves to amend the bill on page one, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof, the following language:

1 **"ARTICLE 2. CRIMES AGAINST THE PERSON.**

2 **§61-2-9. Malicious or unlawful assault; assault; battery;**
3 **penalties.**

4 (a) If any person maliciously shoot, stab, cut or wound any
5 person, or by any means cause him bodily injury with intent to
6 maim, disfigure, disable or kill, he shall, except where it is
7 otherwise provided, be guilty of a felony and, upon conviction,
8 shall be punished by confinement in the penitentiary not less than
9 two nor more than ten years. If such act be done unlawfully, but
10 not maliciously, with the intent aforesaid, the offender shall be
11 guilty of a felony and, upon conviction, shall, in the discretion
12 of the court, either be confined in the penitentiary not less than
13 one nor more than five years, or be confined in jail not exceeding
14 twelve months and fined not exceeding \$500.

15 (b) *Assault.* - ~~If~~ Any person who unlawfully attempts to ~~commit~~
16 ~~a violent injury~~ use physical force capable of causing physical
17 pain or injury to the person of another or unlawfully commits an
18 act ~~which~~ that places another in reasonable apprehension of
19 immediately ~~receiving a violent~~ suffering physical pain or injury,
20 ~~he shall be~~ is guilty of a misdemeanor and, upon conviction, shall

1 be confined in jail for not more than six months, or fined not more
2 than \$100, or both such fine and imprisonment.

3 (c) *Battery.* - ~~If~~ Any person who unlawfully and intentionally
4 makes physical contact ~~of an insulting or provoking nature~~ with
5 force capable of causing physical pain or injury to the person of
6 another or unlawfully and intentionally causes physical ~~harm~~ pain
7 or injury to another person, ~~he shall be~~ is guilty of a misdemeanor
8 and, upon conviction, shall be confined in jail for not more than
9 twelve months, or fined not more than \$500, or both such fine and
10 imprisonment.

11 (d) Any person convicted of a violation of subsection (b) or
12 (c) of this section who has, in the ten years prior to said
13 conviction, been convicted of a violation of either subsection (b)
14 or (c) of this section where the victim was a current or former
15 spouse, current or former sexual or intimate partner, a person with
16 whom the defendant has a child in common, a person with whom the
17 defendant cohabits or has cohabited, a parent or guardian, the
18 defendant's child or ward or a member of the defendant's household
19 at the time of the offense or convicted of a violation of section
20 twenty-eight of this article or has served a period of pretrial
21 diversion for an alleged violation of subsection (b) or (c) of this
22 section or section twenty-eight of this article when the victim has
23 such present or past relationship shall upon conviction be subject
24 to the penalties set forth in section twenty-eight of this article

1 for a second, third or subsequent criminal act of domestic violence
2 offense, as appropriate.

3 **§61-2-28. Domestic violence - Criminal acts.**

4 (a) *Domestic battery.* - Any person who unlawfully and
5 intentionally makes physical contact ~~of an insulting or provoking~~
6 ~~nature~~ with force capable of causing physical pain or injury to his
7 or her family or household member or unlawfully and intentionally
8 causes physical ~~harm~~ pain or injury to his or her family or
9 household member, is guilty of a misdemeanor and, upon conviction
10 thereof, shall be confined in a county or regional jail for not
11 more than twelve months, or fined not more than \$500, or both.

12 (b) *Domestic assault.* - Any person who unlawfully attempts to
13 ~~commit a violent injury~~ use physical force capable of causing
14 physical pain or injury against his or her family or household
15 member or unlawfully commits an act ~~which~~ that places his or her
16 family or household member in reasonable apprehension of
17 immediately ~~receiving a violent~~ suffering physical pain or injury,
18 is guilty of a misdemeanor and, upon conviction thereof, shall be
19 confined in ~~a county or regional~~ jail for not more than six months,
20 or fined not more than \$100, or both.

21 (c) *Second offense.* - Domestic assault or domestic battery.

22 A person convicted of a violation of subsection (a) of this
23 section after having been previously convicted of a violation of
24 subsection (a) or (b) of this section, after having been convicted

1 of a violation of subsection (b) or (c), section nine of this
2 article or subsection (a), section fourteen-g of this article where
3 the victim was his or her current or former spouse, current or
4 former sexual or intimate partner, person with whom the defendant
5 has a child in common, person with whom the defendant cohabits or
6 has cohabited, a parent or guardian, the defendant's child or ward
7 or a member of the defendant's household at the time of the offense
8 or who has previously been granted a period of pretrial diversion
9 pursuant to section twenty-two, article eleven of this chapter for
10 a violation of subsection (a) or (b) of this section, or a
11 violation of subsection (b) or (c), section nine of this article or
12 subsection (a), section fourteen-g of this article where the victim
13 was a current or former spouse, current or former sexual or
14 intimate partner, person with whom the defendant has a child in
15 common, person with whom the defendant cohabits or has cohabited,
16 a parent or guardian, the defendant's child or ward or a member of
17 the defendant's household at the time of the offense is guilty of
18 a misdemeanor and, upon conviction thereof, shall be confined in a
19 county or regional jail for not less than sixty days nor more than
20 one year, or fined not more than \$1,000, or both.

21 A person convicted of a violation of subsection (b) of this
22 section after having been previously convicted of a violation of
23 subsection (a) or (b) of this section, after having been convicted
24 of a violation of subsection (b) or (c), section nine of this

1 article or subsection (a), section fourteen-g of this article where
2 the victim was a current or former spouse, current or former sexual
3 or intimate partner, person with whom the defendant has a child in
4 common, person with whom the defendant cohabits or has cohabited,
5 a parent or guardian, the defendant's child or ward or a member of
6 the defendant's household at the time of the offense or having
7 previously been granted a period of pretrial diversion pursuant to
8 section twenty-two, article eleven of this chapter for a violation
9 of subsection (a) or (b) of this section or subsection (b) or (c),
10 section nine of this article or subsection (a), section fourteen-g
11 of this article where the victim was a current or former spouse,
12 current or former sexual or intimate partner, person with whom the
13 defendant has a child in common, person with whom the defendant
14 cohabits or has cohabited, a parent or guardian, the defendant's
15 child or ward or a member of the defendant's household at the time
16 of the offense shall be confined in a county or regional jail for
17 not less than thirty days nor more than six months, or fined not
18 more than \$500, or both.

19 (d) Any person who has been convicted of a third or subsequent
20 violation of the provisions of subsection (a) or (b) of this
21 section, a third or subsequent violation of the provisions of
22 section nine of this article or subsection (a), section fourteen-g
23 of this article where the victim was a current or former spouse,
24 current or former sexual or intimate partner, person with whom the

1 defendant has a child in common, person with whom the defendant
2 cohabits or has cohabited, a parent or guardian, the defendant's
3 child or ward or a member of the defendant's household at the time
4 of the offense or who has previously been granted a period of
5 pretrial diversion pursuant to section twenty-two, article eleven
6 of this chapter for a violation of subsection (a) or (b) of this
7 section or a violation of the provisions of section nine of this
8 article or subsection (a), section fourteen-g of this article in
9 which the victim was a current or former spouse, current or former
10 sexual or intimate partner, person with whom the defendant has a
11 child in common, person with whom the defendant cohabits or has
12 cohabited, a parent or guardian, the defendant's child or ward or
13 a member of the defendant's household at the time of the offense,
14 or any combination of convictions or diversions for these offenses,
15 is guilty of a felony if the offense occurs within ten years of a
16 prior conviction of any of these offenses and, upon conviction
17 thereof, shall be confined in a state correctional facility not
18 less than one nor more than five years or fined not more than
19 \$2,500, or both.

20 (e) As used in this section, "family or household member"
21 means "family or household member" as defined in §48-27-204 of this
22 code.

23 (f) A person charged with a violation of this section may not
24 also be charged with a violation of subsection (b) or (c), section
25 nine of this article for the same act.

26 (g) No law-enforcement officer may be subject to any civil or

1 criminal action for false arrest or unlawful detention for
2 effecting an arrest pursuant to this section or pursuant to § 48-
3 27-1002 of this code."